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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,479	07/09/2001	Dane J. Hoechst	018470-9053-00	5170
23409	7590	05/19/2004	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			YEAGLEY, DANIEL S	
			ART UNIT	PAPER NUMBER
			3611	
DATE MAILED: 05/19/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/901,479

Applicant(s)

HOECHST ET AL.

Examiner

Daniel Yeagley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 - 4, 6, 8 - 10, 12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers '538 in view of Prince '277.

Chambers shows a motorcycle comprising a frame 20, engine transmission assembly mounted to the frame having a drive sprocket (not shown) mounted to an output shaft 30c (figure 6), a rear wheel sprocket 13 mounted to a rear wheel 58 and mounted to a swing arm 52 having a pivot member 23 interconnecting the swing arm for pivotally mounting the swing arm to at least one of a frame and engine transmission assembly for pivotal movement within a range of motion (figure 9), such that the pivot axis of the drive sprocket and the pivot axis of the swing arm are non-collinear, and includes a flexible drive member 11 (drive belt) having an upper extent a linearly extending between the upper portions of the drive sprocket and wheel sprocket; as shown in figure 9, and a lower extent extending between the lower portions of the drive sprocket and the rear wheel sprocket, which includes a tensioner (not numbered, but shown in figure 9) comprising a bracket and a roller and which encompasses a method such that the tensioner is fixed to at least one of a frame and engine transmission assembly and having a belt path length defined by the drive sprocket, the rear wheel sprocket and the tensioner which remains substantially constant as the swing arm pivots, such that the tensioner maintains contact with a

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side of the lower extent of the flexible drive member which clearly applies force to a bottom side of the lower extent as the swing arm pivots through a range of motion but failed to disclose the tensioner being fixed to at least one of a frame and engine transmission assembly against both pivotal and translational movement with respect to the output shaft as understood.

Prince clearly shows in figure 4, a tensioner (column 3) that includes a bracket 1100 fixed to at least one of the frame and having a roller element 1102 mounted for rotation to the bracket which is shown being in contact with a side of the lower extent of a flexible drive member as claimed, wherein the upper extent of the flexible drive member 930 also linearly extends between the drive sprocket 900 and the wheel sprocket 906, such that the tensioner is shown coupled to the frame against both pivotal and translational movement with respect to an output shaft of the engine/transmission assembly and maintains contact with a side of the lower extent of the flexible drive member as the swing arm pivots through a range of motion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified or replaced the biased tensioning device of Chambers flexible drive means with an alternative fixed drive tensioning means being fixed to the frame or engine assembly like that suggested by Prince, simply as an alternative fixed belt tensioning device which as suggested in column 3 of Prince controls the tension in the flexible drive means in order for the drive member to remain in tensioned contact with the flexible drive member as the swing arm pivots through its range of motion to prevent slack and/or slipping in the drive member as is well known in the drive belt transmission art for retaining a tension on the belt for greater reliability, efficiency and longer life of the flexible drive member.

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3. Claim 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers '538 as modified by Prince '277, as applied to claim 1 above, and in further view of Hatsuyama '069.

Chambers as modified by Prince shows a swing arm pivotally mounted to the engine/transmission assembly and the frame but failed to show the swing arm pivotally mounted to only an engine transmission assembly. Hatsuyama shows a motorcycle having an engine transmission assembly mounted to the frame, which clearly shows the prior art of a swing arm, mounted only to the engine transmission assembly as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified the swing arm of the Chambers as modified by Prince motorcycle by alternatively mounting the swing arm to another component such as the engine transmission assembly as taught by the Hatsuyama swing arm assembly, as an alternative location for mounting the swing arm for pivotal motion of the rear wheel assembly based upon user choice of an alternate frame structure where no frame is available to mount the swing arm to the motorcycle.

4. Claim 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers '538 as modified by Prince as applied to claim 1 above, and in further view of Bernard '216.

Chambers as modified by Prince clearly shows a tensioner fixedly mounted to the frame and contacts the lower extent of the drive member but failed to show the tensioner fixed only to the engine transmission assembly. Bernard shows a motorcycle having an engine transmission assembly mounted to the frame, which clearly shows the prior art of a belt tensioner mounted only to the engine transmission assembly as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified the tensioner of the Chambers as modified by Prince motorcycle to alternately replace the tensioner on the frame with a belt tensioner mounted to the engine transmission assembly such as taught by Bernard belt tension means simply as an alternative location for mounting the tensioner to engage the belt for removing slack and retaining tension in a drive belt based upon structural limitations of the motorcycle components.

### ***Response to Arguments***

5. Applicant's arguments filed 3/29/04 have been considered but are moot in view of the new ground(s) of rejection as now claimed; Chambers as stated above and as clearly shown in figure 9 discloses the prior art of applying a belt tensioner to a flexible drive member in contact with a bottom side of the lower extent of a flexible drive member and mounted to the frame and engine transmission assembly of a motorcycle, such that the upper extent of the driver member linearly extends between the driven sprocket and the wheel sprocket similar to that of applicants' invention and wherein the reference to Prince was cited an example of the prior art which teaches the art of fixedly coupling the belt tensioner to the frame and engine transmission assembly which also shows the upper extent of the flexible driver member being linearly extending between a driven sprocket and a wheel sprocket like that of applicants' claimed invention as now claimed.

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**Conclusion**

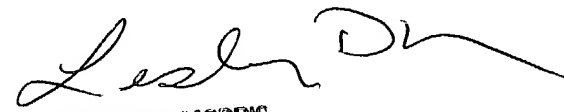
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Suzuki '553 shows a flexible drive transmission assembly having a fixed belt-tensioning device in contact with a bottom side of the lower extent of a flexible drive member.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is 703-305-0838. The examiner can normally be reached on Mon. - Fri; first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D Morris can be reached on 703-308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.Y.

  
LESLEY D. MORRIS  
PATENT EXAMINER  
EBC CENTER 3600